

leave

OGC Has Reviewed

5 January 1954

MEMORANDUM FOR: Assistant Comptroller

SUBJECT : Liquidation of Overpayment of Terminal Leave - Staff Agent [REDACTED] 25X1A9A

25X1 1. Reference requests concurrence in the content of a proposed dispatch, [REDACTED] advising as to the method of collection of the subject overpayment. You have asked that if we find legal objection to the recommended procedure for collection, we furnish our opinion and advise with respect to three specific points which constitute the legal questions raised by the proposed dispatch.

2. We concur in paragraph 1 of the proposed dispatch. A system of periodic payments would seem to be the only logical solution to collection of a considerable sum which the employee was financially unable to liquidate immediately. We assume that you are satisfied that the terms of repayment are the optimum from the Agency standpoint and that process of collection will not be unnecessarily protracted.

3. We are unable to concur in the remaining portions of the proposed dispatch and therefore will address ourselves to the second and third questions raised in paragraph 2 of the reference.

4. There is no authority under existing Federal income tax law and regulations for a cash-basis taxpayer to report on his return net salary in any year in which he has repaid an excess of salary received under claim of right in a prior year. The taxpayer compelled to refund overpayments previously received in such manner finds himself in a legal dilemma inasmuch as he is precluded from reopening his prior year's return, because repayment is not made until a subsequent year, and at the same time is allowed to recoup a tax benefit from repayment only by an itemized miscellaneous deduction in the year in which repaid, thereby precluding use of the standard deduction which he might otherwise employ. The fundamental rule from which this seeming inequity results is grounded upon a decision of the U. S. Supreme Court in *North American Oil Company v. Burnet*, 286 US 417, 3 USTC paragraph 943 (1932).

5. As is apparent, the only exception to the rule is limited to cases of receipt based upon absence of any claim of right. Although there is a dearth of case law on this point, we are informally advised

by officials of the Internal Revenue Service that absence of claim of right can be found only in those situations where the taxpayer at the time of receipt is aware that he has received an excessive payment and consequently realizes the restrictions upon its disposition. Inasmuch as the effect of the procedure, which you indicate is presently followed, may be to afford an unwarranted tax benefit to certain employees under circumstances that are not directly related to the peculiar functions of this Agency, we do not believe that it can be given blanket legal sanction except where recognition is obtained from the Internal Revenue Service of particular circumstances unique to CIA which justify non-application of the strict claim of right test. To this end we have informally mentioned the existence of the problem to cleared officials in IRS and furnished them hypothetical illustrations of various ways in which difficulty may arise. These officials evidenced full appreciation of the nature of the problem and wished to give it more complete consideration before indicating the extent to which they felt our circumstances fell without the claim of right rule. We will inform you as soon as we have heard further from them.

6. We are of the opinion that the language of paragraph 3 of the proposed dispatch should be appropriately reworded in keeping with the opinion of this office dated 10 December 1953, subject, "Annual Leave, Staff Agents," copies of which were furnished you.

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Office of General Counsel

OGC/GHK:cst

Distribution:

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(SENDER WILL CIRCLE CL INDICATION TOP AND BOTTOM)

**CENTRAL INTELLIGENCE AGENCY
 OFFICIAL ROUTING SLIP**

TO		INITIALS	DATE
1	Mr. 25X1A9A		
2	Room 1711 J. Bldg.		
3			
4			
5			
FROM		INITIALS	DATE
1	Asst. Comptroller ec.		
2			
3			

<input type="checkbox"/> APPROVAL	<input type="checkbox"/> INFORMATION	<input type="checkbox"/> SIGNATURE
<input type="checkbox"/> ACTION	<input type="checkbox"/> DIRECT REPLY	<input type="checkbox"/> RETURN
<input type="checkbox"/> COMMENT	<input type="checkbox"/> PREPARATION OF REPLY	<input type="checkbox"/> DISPATCH
<input type="checkbox"/> CONCURRENCE	<input type="checkbox"/> RECOMMENDATION	<input type="checkbox"/> FILE

Remarks:

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Security Information*Office Memorandum* • UNITED STATES GOVERNMENT

TO : General Counsel
25X1A9A Attn: [] -- Room 1711 J. Bldg.
FROM : Assistant Comptroller

DATE: 9 December 1953

SUBJECT: Liquidation of Overpayment of Terminal Leave -- Staff Agent
25X1A9A []

1. Subject employee received an erroneous lump sum leave payment in January 1952 in the amount of \$1,651.81. To adjust this error now requires (a) collection of the overpayment, (b) adjustment in subject's 1953 and/or 1954 income tax statement to compensate for the excess taxes paid by the employee in 1952 because of the overpayment, (c) restoration of employee's annual leave after refund of overpayment is received.

2. Attached hereto is a proposed dispatch [] to subject. We would appreciate receiving your concurrence on this dispatch or your opinion and advice on the following points:

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- a. Paragraph 1 of the dispatch authorizes the employee to repay the indebtedness over a 12 months' period. Do you perceive any legal objections to this arrangement?
- b. Paragraph 2 of the dispatch provides that the Agency will give the employee statements of "net" salary paid in 1953 and 1954 which would include reduction of the amount refunded during those years from the gross amount paid. This technique has been used before in similar cases. Do you perceive any legal objection to this practice?
- c. Paragraph 3 of the dispatch provides for restoration of the employee's leave, but points out that due to limitations respecting the amount of leave carry-over, that he will forfeit 44 hours of annual leave as of the end of 1952 and any amount accrued as of the end of 1953 which is in excess of the normal carry-over limitations. Your advice is requested as to whether or not persons in a cover status are required to forfeit leave accrued in excess of statutory limitations, or whether such leave may continue to accrue and be held in escrow for such employees,

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without regard to normal limitations, until they return to an overt employment status? If it is determined that such leave may be held in escrow instead of forfeited, we have the further problem of determining the length of time which the employee will be allowed after his return to an overt status, in which to use such excess accumulated leave.

3. We would appreciate your prompt action on this in order that a suitable dispatch may be released to this employee. We are also interested in your reply to the above queries in order that we may use the legal precedent established in this case in handling other similar cases.



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Attachment

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